

6604 - a

REGISTRATION NO. _____

MAY 24 1972 11 22 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

between

**FIRST SECURITY STATE BANK,
as Trustee**

and

**THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY**

Dated as of May 1, 1972

LEASE OF RAILROAD EQUIPMENT dated as of May 1, 1972, between FIRST SECURITY STATE BANK, a Utah corporation (hereinafter called the Lessor), as Trustee under a Trust Agreement dated as of May 1, 1972, with FIRST SECURITY BANK OF IDAHO, National Association, and FIRST SECURITY BANK OF UTAH, National Association (hereinafter called the Beneficiaries), and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), with Greenville Steel Car Company (hereinafter referred to as the Manufacturer), wherein the Manufacturer agrees to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

WHEREAS, the Manufacturer proposes to assign its interest in the Conditional Sale Agreement to Mellon National Bank and Trust Company (hereinafter referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said railroad equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to September 30, 1972 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which, and on the date or dates on which, such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

The Lessee represents and warrants that, at the time of delivery of each Unit to the Lessee, such Unit will not have been used by the Lessee and no amortization or depreciation will have been claimed by the Lessee with respect thereto.

§ 2. *Rentals.* Subject to the provisions of the next succeeding paragraph, the Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments, payable on April 1 and October 1 in each year commencing October 1, 1972. The first such semiannual payment shall be in an amount equal to a percentage, equal to the average Prime Rate (as defined in the Conditional Sale Agreement) plus .94564%, of the Purchase Price (as defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to October 1, 1972, all divided by 360. The next 30 such semiannual payments

shall each be in an amount equal to the sum of (i) the principal and interest payments then due on the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and (ii) an amount equal to .1900975% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee (and the Lessee hereby agrees) to make all the payments provided for in this Lease in immediately available Pittsburgh funds for the account of the Lessor, c/o the Vendor, and such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreement then due and payable or due and payable on the date such payments are due hereunder and, so long as no default under the Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatement, reduction or setoff due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of

this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Vendor under the Conditional Sale Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked

on each side of such Unit, in letters not less than one inch in height, the following words:

“MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA—SECURITY OWNER”

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor and the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collec-

tion or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) or Mexican taxes (other than any United States federal income tax and, to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability, any Canadian [Dominion or Provincial] or Mexican income tax, payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being hereinafter called impositions), hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof or of the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. At the option of the Lessor, such payment of impositions by the Lessee shall be made directly to the appropriate taxing authority. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership

thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor pursuant to Article 9 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Manufacturer and the Vendor pursuant to said Article 9.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, and the making of the payment of the rental then due with respect to such Unit, the rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate. In the event of the loss, theft, irreparable damage or complete destruction of such Unit, the Lessee shall also pay to the Lessor the salvage value of such Unit, which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$6.00 per gross ton for dismantling such Unit. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the Casualty Value of any Unit and, if applicable, the salvage value of such Unit, execute and deliver to or upon the order of the Lessee a bill of sale (without warranties) for such Unit or for any Unit abandoned pursuant to § 13 hereof.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price

of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units in the Dominion of Canada or any Province or Territory thereof;

E. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

F. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

G. no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof).

§ 15. *Federal Income Taxes.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation):

(i) the Investment Credit (as defined in § 9 hereof) which is or would be available to the Lessor if it is as-

sumed that to the full extent of the Purchase Price of the Units the Units will qualify as “new section 38 property” placed in service by the Lessor, having an “applicable percentage” of 100% (all within the meaning of Sections 46(c) and 48(b) of the Code) and will continue to constitute “section 38 property” (within the meaning of Section 48(a) of the Code) at all times during the term of this Lease; and

(ii) the ADR Deduction (as defined in § 9 hereof) which is or would be available to the Lessor under Section 167 of the Code and Income Tax Regulations Section 1.167(a)-(11) thereunder (as presently in effect) if it is assumed that the Units will at all times during the term of this Lease constitute “eligible property” within the meaning of paragraph (b)(2) of said Regulation and that the Lessor will be entitled to take into account depreciation deductions computed on the most favorable basis presently available to the Lessor under Section 167 of the Code and said Regulation (as presently in effect).

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that it and each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) none of the Units constitutes property of which construction, reconstruction or erection was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of

the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use.

If for any reason, including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder, except as a direct result of the occurrence of any Excluded Event set forth below, the Lessor shall lose or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit or the ADR Deduction (hereinafter each called a Benefit), then the Lessee shall on each rental payment date occurring after written notice to the Lessee by the Lessor that any Benefit has not been claimed or that the Lessor has received from the Internal Revenue Service a notice of deficiency or other advice with respect to the disallowance, inability to claim or recapture of any Benefit, pay to the Lessor an amount which will cause the Lessor's net return in respect of the Units under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States of America against the Lessor attributable to

the disallowance, recapture or loss of all or any portion of such Benefit; *provided, however*, that such amount shall not be payable if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of or shall have been required to recapture, all or any portion of any Benefit with respect to all or part of the Units as a direct result of the occurrence of any of the following events (herein called Excluded Events):

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the applicable Casualty Value pursuant to § 6 hereof;

(ii) a voluntary transfer or voluntary disposition by the Lessor of any interest in the Units (other than the Assignment) if such transfer or disposition is made at a time when no Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim any Benefit in its federal income tax return for the appropriate year, unless such failure occurs after the Lessor shall have requested in writing that the Lessee furnish to the Lessor a written opinion of independent tax counsel (reasonably satisfactory to the Lessor) to the effect that the Lessor has a bona fide claim to such Benefit and the Lessee shall have failed to furnish such opinion of counsel to the Lessor within 30 days after such request;

(iv) the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability or tax against which to credit the Investment

Credit or sufficient income to benefit from the ADR Deduction, as applicable.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Investment Credit or ADR Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to such Investment Credit or ADR Deduction disallowed, computed at the rate of 6% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 15. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

§ 16. *Recording; Expenses.* Prior to the delivery and acceptance of any of the Units, the Lessee will, at the expense of the Lessor, cause this Lease and any assignment hereof, the Conditional Sale Agreement and the Assignment to be filed and recorded with the Interstate Com-

merce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited in the office of the Registrar General of Canada; and the Lessee will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette* in accordance with the Railway Act of Canada.

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such execution, acknowledgment and delivery.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the fees and disbursements of any counsel which it may respectively retain.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $1\frac{1}{2}\%$ over the Prime Rate (as defined in the Conditional Sale Agreement) from time to time, computed per annum, of the amount of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed

to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at P. O. Box 149, Salt Lake City, Utah 84110, Attention F. W. Champ, President;

if to the Lessee, at Pittsburgh and Lake Erie Terminal Building, Pittsburgh, Pennsylvania 15219;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.*

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto.

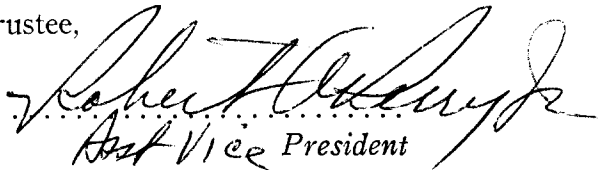
§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in such case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of May 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* This Lease shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

FIRST SECURITY STATE BANK,
as Trustee,

by 
Asst Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY,

by 
President

[CORPORATE SEAL]

Attest:


ASSISTANT Secretary

of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units in the Dominion of Canada or any Province or Territory thereof;

E. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

F. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

G. no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof).

§ 15. *Federal Income Taxes.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation):

(i) the Investment Credit (as defined in § 9 hereof) which is or would be available to the Lessor if it is as-

sumed that to the full extent of the Purchase Price of the Units the Units will qualify as "new section 38 property" placed in service by the Lessor, having an "applicable percentage" of 100% (all within the meaning of Sections 46(c) and 48(b) of the Code) and will continue to constitute "section 38 property" (within the meaning of Section 48(a) of the Code) at all times during the term of this Lease; and

(ii) the ADR Deduction (as defined in § 9 hereof) which is or would be available to the Lessor under Section 167 of the Code and Income Tax Regulations Section 1.167(a)-(11) thereunder (as presently in effect) if it is assumed that the Units will at all times during the term of this Lease constitute "eligible property" within the meaning of paragraph (b)(2) of said Regulation and that the Lessor will be entitled to take into account depreciation deductions computed on the most favorable basis presently available to the Lessor under Section 167 of the Code and said Regulation (as presently in effect).

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that it and each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) none of the Units constitutes property of which construction, reconstruction or erection was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of

the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use.

If for any reason, including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder, except as a direct result of the occurrence of any Excluded Event set forth below, the Lessor shall lose or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit or the ADR Deduction (hereinafter each called a Benefit), then the Lessee shall on each rental payment date occurring after written notice to the Lessee by the Lessor that any Benefit has not been claimed or that the Lessor has received from the Internal Revenue Service a notice of deficiency or other advice with respect to the disallowance, inability to claim or recapture of any Benefit, pay to the Lessor an amount which will cause the Lessor's net return in respect of the Units under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States of America against the Lessor attributable to

the disallowance, recapture or loss of all or any portion of such Benefit; *provided, however*, that such amount shall not be payable if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of or shall have been required to recapture, all or any portion of any Benefit with respect to all or part of the Units as a direct result of the occurrence of any of the following events (herein called Excluded Events):

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the applicable Casualty Value pursuant to § 6 hereof;

(ii) a voluntary transfer or voluntary disposition by the Lessor of any interest in the Units (other than the Assignment) if such transfer or disposition is made at a time when no Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim any Benefit in its federal income tax return for the appropriate year, unless such failure occurs after the Lessor shall have requested in writing that the Lessee furnish to the Lessor a written opinion of independent tax counsel (reasonably satisfactory to the Lessor) to the effect that the Lessor has a bona fide claim to such Benefit and the Lessee shall have failed to furnish such opinion of counsel to the Lessor within 30 days after such request;

(iv) the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability or tax against which to credit the Investment

Credit or sufficient income to benefit from the ADR Deduction, as applicable.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Investment Credit or ADR Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to such Investment Credit or ADR Deduction disallowed, computed at the rate of 6% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 15. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

§ 16. *Recording; Expenses.* Prior to the delivery and acceptance of any of the Units, the Lessee will, at the expense of the Lessor, cause this Lease and any assignment hereof, the Conditional Sale Agreement and the Assignment to be filed and recorded with the Interstate Com-

merce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited in the office of the Registrar General of Canada; and the Lessee will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette* in accordance with the Railway Act of Canada.

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such execution, acknowledgment and delivery.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the fees and disbursements of any counsel which it may respectively retain.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $1\frac{1}{2}\%$ over the Prime Rate (as defined in the Conditional Sale Agreement) from time to time, computed per annum, of the amount of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed

to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at P. O. Box 149, Salt Lake City, Utah 84110, Attention F. W. Champ, President;

if to the Lessee, at Pittsburgh and Lake Erie Terminal Building, Pittsburgh, Pennsylvania 15219;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.*

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto.

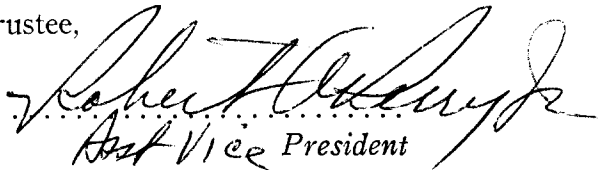
§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in such case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of May 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* This Lease shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

FIRST SECURITY STATE BANK,
as Trustee,

by 
Asst Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY,

by 
President

[CORPORATE SEAL]

Attest:


.....
ASSISTANT Secretary

of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units in the Dominion of Canada or any Province or Territory thereof;

E. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

F. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

G. no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof).

§ 15. *Federal Income Taxes.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation):

(i) the Investment Credit (as defined in § 9 hereof) which is or would be available to the Lessor if it is as-

sumed that to the full extent of the Purchase Price of the Units the Units will qualify as "new section 38 property" placed in service by the Lessor, having an "applicable percentage" of 100% (all within the meaning of Sections 46(c) and 48(b) of the Code) and will continue to constitute "section 38 property" (within the meaning of Section 48(a) of the Code) at all times during the term of this Lease; and

(ii) the ADR Deduction (as defined in § 9 hereof) which is or would be available to the Lessor under Section 167 of the Code and Income Tax Regulations Section 1.167(a)-(11) thereunder (as presently in effect) if it is assumed that the Units will at all times during the term of this Lease constitute "eligible property" within the meaning of paragraph (b)(2) of said Regulation and that the Lessor will be entitled to take into account depreciation deductions computed on the most favorable basis presently available to the Lessor under Section 167 of the Code and said Regulation (as presently in effect).

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that it and each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) none of the Units constitutes property of which construction, reconstruction or erection was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of

the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use.

If for any reason, including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder, except as a direct result of the occurrence of any Excluded Event set forth below, the Lessor shall lose or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit or the ADR Deduction (hereinafter each called a Benefit), then the Lessee shall on each rental payment date occurring after written notice to the Lessee by the Lessor that any Benefit has not been claimed or that the Lessor has received from the Internal Revenue Service a notice of deficiency or other advice with respect to the disallowance, inability to claim or recapture of any Benefit, pay to the Lessor an amount which will cause the Lessor's net return in respect of the Units under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States of America against the Lessor attributable to

the disallowance, recapture or loss of all or any portion of such Benefit; *provided, however*, that such amount shall not be payable if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of or shall have been required to recapture, all or any portion of any Benefit with respect to all or part of the Units as a direct result of the occurrence of any of the following events (herein called Excluded Events):

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the applicable Casualty Value pursuant to § 6 hereof;

(ii) a voluntary transfer or voluntary disposition by the Lessor of any interest in the Units (other than the Assignment) if such transfer or disposition is made at a time when no Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim any Benefit in its federal income tax return for the appropriate year, unless such failure occurs after the Lessor shall have requested in writing that the Lessee furnish to the Lessor a written opinion of independent tax counsel (reasonably satisfactory to the Lessor) to the effect that the Lessor has a bona fide claim to such Benefit and the Lessee shall have failed to furnish such opinion of counsel to the Lessor within 30 days after such request;

(iv) the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability or tax against which to credit the Investment

Credit or sufficient income to benefit from the ADR Deduction, as applicable.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Investment Credit or ADR Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to such Investment Credit or ADR Deduction disallowed, computed at the rate of 6% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 15. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

§ 16. *Recording; Expenses.* Prior to the delivery and acceptance of any of the Units, the Lessee will, at the expense of the Lessor, cause this Lease and any assignment hereof, the Conditional Sale Agreement and the Assignment to be filed and recorded with the Interstate Com-

merce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited in the office of the Registrar General of Canada; and the Lessee will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette* in accordance with the Railway Act of Canada.

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such execution, acknowledgment and delivery.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the fees and disbursements of any counsel which it may respectively retain.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $1\frac{1}{2}\%$ over the Prime Rate (as defined in the Conditional Sale Agreement) from time to time, computed per annum, of the amount of the overdue rentals for the period of time during which they are overdue.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed

to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at P. O. Box 149, Salt Lake City, Utah 84110, Attention F. W. Champ, President;

if to the Lessee, at Pittsburgh and Lake Erie Terminal Building, Pittsburgh, Pennsylvania 15219;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.*

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto.

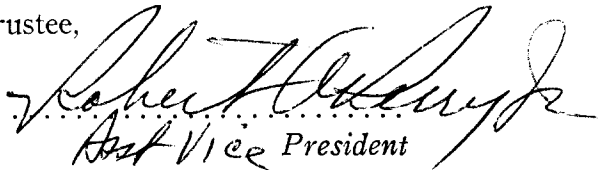
§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in such case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of May 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* This Lease shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

FIRST SECURITY STATE BANK,
as Trustee,

by 
Asst Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY,

by 
President

[CORPORATE SEAL]

Attest:


.....
ASSISTANT Secretary

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE)

On this 22nd day of May, 1972, before me personally appeared Robert A. Perry, Jr., to me personally known who, being by me duly sworn, says that he is an Assistant Vice President of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Donna R. Smoother

Notary Public

My Commission expires

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY) ss.:

On this 23rd day of May, 1972, before me personally appeared H. G. ALLYN, JR., to me personally known, who, being by me duly sworn, says that he is President of THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Donna R. Smoother
.....
Notary Public

[NOTARIAL SEAL]

My Commission expires

Donna R. Smoother, Notary Public
Pittsburgh, Allegheny Co., Pa.
My Commission Expires
February 3, 1976

SCHEDULE A

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
100-ton Gondola Cars	P&LE No. 100, dated December 9, 1971	Greenville, Pa.	500	18500 to 18999	\$15,000	\$7,500,000

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of May 1, 1972 (hereinafter called "this Assignment"), by and between FIRST SECURITY STATE BANK (hereinafter called the Company), as Trustee under a Trust Agreement dated as of May 1, 1972, with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association, and MELLON NATIONAL BANK AND TRUST COMPANY (hereinafter called the Investor).

WHEREAS the Company has entered into a Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), with GREENVILLE STEEL CAR COMPANY (hereinafter called the Manufacturer) providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex A to the Conditional Sale Agreement as are delivered to and accepted by the Company thereunder; and

WHEREAS the Manufacturer has assigned its interests in the Conditional Sale Agreement to the Investor, pursuant to an Agreement and Assignment dated as of May 1, 1972; and

WHEREAS the Company and THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of May 1, 1972 (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Company under the Conditional Sale Agreement and as an inducement to the Investor to invest in the Conditional Sale Indebtedness (as that term is defined in

the Conditional Sale Agreement), the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Investor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Company hereby assigns, transfers and sets over unto the Investor, as collateral security for the payment and performance of the Company's obligations under the Conditional Sale Agreement, all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Investor in its own name, or the name of its nominee, or (with the consent of the Company) in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

Investor shall terminate, and all estate, right, title and interest of the Investor in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms, (b) the Company has not executed any other assignment of the Lease and the interests of the Company under the Lease are and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement on or prior to the date hereof and (e) the Lease and the Conditional Sale Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreement shall occur and be continuing, the Investor may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, take possession of and operate the

Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Investor deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. The Company covenants and agrees with the Investor that in any suit, proceeding or action brought by the Investor, as assignee of the Company's right, title and interest under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Investor harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Investor or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Investor in order to confirm or further assure, the interests of the Investor hereunder.

Investor shall terminate, and all estate, right, title and interest of the Investor in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms, (b) the Company has not executed any other assignment of the Lease and the interests of the Company under the Lease are and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement on or prior to the date hereof and (e) the Lease and the Conditional Sale Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreement shall occur and be continuing, the Investor may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, take possession of and operate the

Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Investor deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. The Company covenants and agrees with the Investor that in any suit, proceeding or action brought by the Investor, as assignee of the Company's right, title and interest under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Investor harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Investor or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Investor in order to confirm or further assure, the interests of the Investor hereunder.

9. The Investor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

10. This Assignment shall be governed by the laws of the Commonwealth of Pennsylvania.

11. The Company shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Investor at its office at Mellon Square, Pittsburgh, Pennsylvania 15230, attention of S. R. Hackett, Vice President, or at such other address as the Investor shall designate.

12. Anything herein or in the Lease or in the Conditional Sale Agreement contained to the contrary notwithstanding, the Company may, but shall be under no obligation to, cure any Event of Default (as Event of Default is defined in § 9 of the Lease) suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the performance of any such act by the Company, the Event of Default under the Lease or any event of default under the Conditional Sale Agreement which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional Sale Agreement be deemed to have been cured to the same extent as if the Lessee had made such payment or

performed such act. The curing of any Event of Default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent Event of Default suffered or permitted to occur by the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY STATE BANK,
as Trustee,

[CORPORATE SEAL]

by

Robert H. Kemp
.....
Asst Vice President

Attest:

John L. Record
Assistant Secretary

MELLON NATIONAL BANK AND
TRUST COMPANY,

by

Samuel A. McCullough
.....
Vice President

[CORPORATE SEAL]

Attest:

William J. Hall
.....
Assistant Secretary

STATE OF UTAH,)
COUNTY OF SALT LAKE) ss.:

On this 22nd day of May, 1972, before me personally appeared Robert A. Perry, Jr., to me personally known who, being by me duly sworn, says that he is an Assistant Vice President of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leah C. Seaton

My Commission

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.:

On this 23rd day of May, 1972, before me personally appeared SAMUEL A. McCULLOUGH, to me personally known, who, being by me duly sworn, says that he is a Vice President of MELLON NATIONAL BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Matilda Barni
Notary Public

[NOTARIAL SEAL]

My Commission expires

MATILDA BARNI, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires
October 1972

LESSEE'S CONSENT

The undersigned, a Delaware corporation, the Lessee named in the Lease referred to in the foregoing Collateral Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

Dated as of May 1, 1972.

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY,

[CORPORATE SEAL]

by

H.S. Allen, Jr.
.....
President

Attest:

M.N. Durlan
.....

ASSISTANT Secretary